IN THE HIGH COURT OF JUDICATURE AT JABALPUR

W.P.No.658 of 99

PETITIONER : Vinod Kumar Jha son of late Shri Hemdatta Jha, aged about 70 years, R/O Itawari Bazar Road, Khairagarh, Rajnandgoan.

VS

RESPONDENTS :

1. The State of Madhya Pradesh, Through The Secretary, Higher Education, Vallabh Bhavan, Bhopal (M.P.).

2. The Commissioner of Higher Education, Non-Govt. Educational Institutions), Hindi Bhavan. Shyamla Hills, Bhopal (M.P.).

3. The Chancellor of Universities, Office of Hon'ble Governer, Rajbhavan, Bhopal (M.P.).

4. The Vice-Chancellor, Indira Kala Sangit Vishwavidyalaya, Khairagarh, Rajnandgoan (M.P.), Through The Registrar.

WRIT PETITION UNDER ART. 226/227 OF THE CONSTITUTION OF INDIA

The petitioner abovenamed most respectfully begs to submit as under -

1. PARTICULARS OF THE PETITIONER :

As stated above in the Cause Title.

2. PARTICULARS OF RESPONDENTS :

As stated above in the Cause Title.

(72)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 658/99 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	15/09/2003: -	

Heard Shri M.P.S. Bhatia counsel for the petitioner and Shri Ranbir Singh, Govt. Advocate, for the State of Chhattisgarh/respondent.

The petitioner has preferred this petition under Articles 226/227 of the Constitution of India in which he has mentioned that he was an employee of respondent No.4 namely Indira Kala Sangit Vishwavidyalaya, Khairagarh. The petitioner was retired from service on 30/04/1989 while he was working on the post of Head Clerk and since retirement, retrial benefits have not been given to the petitioner as applicable to the employees of respondent No.4.

In the return submitted by respondents 1 and 2 it has been mentioned that the petitioner was retired from service on 01/05/1989 and thereafter he was given extension up to 24/07/1990 as Upper Division Clerk. This appointment from 01/08/1990 to 08/04/1994 he had worked as ad hoc in the Institution. Respondents 1 and 2 have already issued Pension Payment Order to the petitioner on 26/09/1998. Therefore, the only dispute is of the period from 01/05/1989 to 08/04/1994 as the petitioner had worked on extension and this extension continued only up to 24/07/1990and he worked as

(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

daily wages from 01/08/1990 to 08/04/1994. Hence, this period is not pensionable as per the rules. Respondents 1 and 2 are considering for finalizing the pension within fifteen days. The only dispute would remain after finding this from 01/05/1989 to 24/07/1990. In view of the above facts and circumstances, the petitioner is only entitled for pension and he will not be entitled for D.A. in case of extension of service. Hence, this petition is misconceived and devoid of any material substance. The same is liable to be dismissed.

I have heard the learned counsel for the parties.

A perusal of the pension order dated 01/03/1999 reveals that vide this order pension w.e.f. 08/04/1994 to 31/10/1998 has already been sanctioned and vide another dated 01/03/1999 an amount of Rs.22,447/- being the amount of gratuity Rs.12,293/- and pension communication payment Rs.10,223/- have also been sanctioned. Therefore, the only dispute remains for the period w.e.f. 01/05/1989 to 07/04/1994. Regarding this period respondents 1 and 2 have admitted in their return that they are considering the case of the petitioner. They have mentioned that from 01/05/1989 to 23/07/1990 the petitioner was given extension and that is why he is not entitled for any pension for that period. Whereas a perusal of

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the order (Annexure-P/17) dated 02/05/1998 reveals that the petitioner was appointed as UDC in the University in the scale of pay of Rs.1200-1800, on Rs.1200/- per month, plus the DA/ADA and other allowances, as per the University Rules, for 89 days from 02/05/1989 to 29/07/1989. Thereafter the petitioner was again appointed for 89 days on the same pay-scale w.e.f. 30/01/1990 to 28/04/1990. Therefore, in any case this cannot be considered as the extension. There is clear brake of service. Thereafter the petitioner was appointed from 01/08/1990 on daily wages. This was the independent appointment and it cannot be said to be the extension. There was break in service i.e. 01/05/1989 and again after 29/07/1989. Therefore, the respondents are not entitled for withholding the pension of the petitioner for that period. In view of the above, the petitioner is entitled for the pension w.e.f. 01/05/1989 onward and since the pension has already been granted from 08/04/1994 to 31/10/1998, the respondents are directed to grant pension to the petition from 01/05/1989 to 07/04/1994. However, if rules permit then the respondents are entitled to deduct the amount equivalent to the pension amount out of the amount, which was paid to the petitioner during the two re-appointments, which were for the period of 89 days each namely 02nd	

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

May 1989 to 29th July 1989 and 30th January 1990 to 28th April 1990. The remaining pension be paid to the petitioner. Since the pension of the petitioner has been withheld by the respondents without any valid reason that too for 13 years, therefore, the petitioner is entitled for 9% interest on the pension amount. The respondents are directed to decide the petitioner's pension case within three months from today.

With the above observation, the petition is disposed of.

Sd/-
L.C.BHADOO
Judge

[पीछे देखिये